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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69007; File No. SR-MIAX-2013-05)

February 28, 2013

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the MIAX Top of Market (“ToM”) Data Product

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 15, 2013, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to establish a market data product related to the trading of standardized options on MIAX. Specifically, the Exchange is proposing to provide the MIAX Top of Market (“ToM”), a direct data feed that features the Exchange’s best bid and offer, with aggregate size and last sale information on the MIAX system.

The text of the proposed rule change is also available on the Exchange’s website at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish the ToM market data product. ToM provides a direct data feed that includes the Exchange's best bid and offer, with aggregate size, based on displayable order and quoting interest on the Exchange. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority ("OPRA"). The ToM and OPRA data leave the MIAX system at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the "OPRA Plan"), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of options information.

In addition to MIAX's best bid and offer, with aggregate size and last sale information, subscribers to ToM will also receive: opening imbalance condition information; opening and intra-day routing information; Expanded Quote Range<sup>3</sup> information; Post-Halt Notification<sup>4</sup> and

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<sup>3</sup> Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest valid width quote bid and lowest valid width quote offer, the System will calculate an Expanded Quote Range ("EQR"). The EQR

Liquidity Refresh<sup>5</sup> condition information. MIAX Market Makers receive this additional information by way of connectivity with the MIAX Express Interface (“MEI”);<sup>6</sup> those who are not MIAX Market Makers must subscribe to ToM in order to receive the additional information.

The Exchange expects to file with the Commission to assess fees applicable to ToM. Such fees will not be assessed until the first full calendar month during which MIAX lists and trades options overlying at least 100 underlying securities. Once MIAX begins listing and trading options overlying at least 100 underlying securities, and subject to filing with the Commission, MIAX will assess market data fees applicable to ToM.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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will be recalculated any time a Route Timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO price or size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR will represent the limits of the range in which transactions may occur during the opening process. See Exchange Rule 503(f)(5).

<sup>4</sup> After the Exchange has determined to end a trading system halt, the System will broadcast to subscribers of the Exchange’s data feeds a Post-Halt Notification. See Exchange Rule 504(d).

<sup>5</sup> If a Market Maker quote was all or part of the MIAX Best Bid or Offer (“MBBO”) and the Market Maker’s quote was exhausted by the partial execution of the initiating order, the System will pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO to be received (“liquidity refresh pause”). See Exchange Rule 515(c)(1)(iii)(A).

<sup>6</sup> MEI is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The ToM product is designed to promote just and equitable principles of trade by providing all subscribers with top of market data that should enable them to make informed decisions on trading in MIAX options by using the ToM data to assess current market conditions that directly affect such decisions. The market data provided by ToM removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX market more transparent and accessible to market participants making routing decisions concerning their options orders.

The ToM market data product is also designed to protect investors and the public interest by providing data to subscribers that is already currently available on other exchanges<sup>9</sup> and will enable MIAX to compete with such other exchanges, thereby offering market participants with additional data in order to seek the market center with the best price and the most liquidity on which to execute their transactions, all to the benefit of investors and the public interest, and to the marketplace as a whole.

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<sup>9</sup> See Securities Exchange Act Release No. 60459 (August 7, 2009), 74 FR 41466 (August 17, 2009) (SR-Phlx-2009-54) (Order Approving a Proposed Rule Change to Establish Fees for the Top of PHLX Options Direct Data Feed Product).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. .

On the contrary, the Exchange believes that the ToM market data product will enhance competition in the U.S. options markets by providing similar data to that which is currently provided on another options exchange.<sup>10</sup>

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

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<sup>10</sup> Id.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-05 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MIAX-2013-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-MIAX-2013-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).